

SENATE BILL 621

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P2

2004 Regular Session
(4lr2528)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senators Klausmeier, Britt, Brochin, Conway, Currie, Della, Exum, Frosh, Garagiola, Giannetti, Gladden, Green, Grosfeld, Hollinger, Hughes, Jones, Lawlah, McFadden, Pinsky, Ruben, Stone, and ~~Teitelbaum~~ Teitelbaum, and Kramer**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **State Procurement Contracts - Living Wage**

3 FOR the purpose of requiring certain contractors and subcontractors to pay certain
4 employees a certain minimum wage ~~level~~ rate under certain State procurement
5 contracts; providing certain exemptions and reductions in a certain wage ~~level~~
6 rate; requiring the Commissioner of Labor and Industry to ~~prescribe~~ alter a
7 ~~living~~ certain wage ~~level~~ rate based on a certain Consumer Price Index and to
8 administer and enforce requirements with regard to ~~employees~~ certain
9 employers; requiring the Commissioner to publish a certain wage rate under
10 certain circumstances; requiring certain units of State government to adopt
11 regulations and authorizing certain units to grant certain waivers; granting
12 certain employees rights of free speech and association; requiring ~~covered~~
13 certain employers to post certain information; authorizing an employee to sue
14 for certain ~~damages~~ wages under certain circumstances; providing certain

1 remedies and certain procedural requirements; prohibiting an employer from
 2 retaliating against an employee based on a certain action; ~~providing for the~~
 3 ~~application of this Act~~; establishing certain penalties; defining certain terms;
 4 requiring the Department of Legislative Services to study certain matters and
 5 report to the General Assembly on or before a certain date; requiring certain
 6 governmental units to cooperate with the Department and provide certain
 7 information in a certain manner; providing for the application of this Act; and
 8 generally relating to ~~levels of wages paid to employees under certain~~
 9 ~~procurement contracts~~ the living wage.

10 BY repealing and reenacting, without amendments,
 11 Article - State Finance and Procurement
 12 Section 11-101(x)
 13 Annotated Code of Maryland
 14 (2001 Replacement Volume and 2003 Supplement)

15 BY adding to
 16 Article - State Finance and Procurement
 17 Section 12-101(c); and 18-101 through 18-110, inclusive, to be under the new
 18 title "Title 18. Living Wage"
 19 Annotated Code of Maryland
 20 (2001 Replacement Volume and 2003 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - State Finance and Procurement**

24 11-101.

25 (x) (1) "Unit" means an officer or other entity that is in the Executive
 26 Branch of the State government and is authorized by law to enter into a procurement
 27 contract.

28 (2) "Unit" does not include:

29 (i) a bistate, multistate, bicounty, or multicounty governmental
 30 agency; or

31 (ii) a special tax district, sanitary district, drainage district, soil
 32 conservation district, water supply district, or other political subdivision of the State.

33 12-101.

34 (C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND
 35 INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
 36 OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO
 37 THE PROVISIONS OF TITLE 18 OF THIS ARTICLE.

1 TITLE 18. LIVING WAGE.

2 18-101.

3 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

4 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

5 (C) "EMPLOYER" MEANS A ~~FOR PROFIT ENTITY~~ CONTRACTOR OR
6 SUBCONTRACTOR THAT:

7 ~~(1)~~ (1) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
8 MORE; ~~OR~~

9 ~~(2)~~ (2) ~~HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR MORE~~
10 ~~UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION.~~

11 (D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER §
12 18-103 OF THIS TITLE.

13 18-102.

14 (A) (1) THIS TITLE APPLIES TO AN ~~A FULL-TIME~~ AN EMPLOYEE OF AN
15 EMPLOYER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE *IF AT LEAST*
16 *ONE HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A STATE*
17 *CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE*
18 *CONTRACT* ~~IF AT LEAST ONE HALF OF THE EMPLOYEE'S TIME DURING ANY WORK~~
19 ~~WEEK RELATES TO A STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR~~
20 ~~SERVICES UNDER A STATE CONTRACT.~~

21 (2) THIS TITLE DOES NOT APPLY TO AN EMPLOYEE OF AN EMPLOYER IF
22 THE EMPLOYEE:

23 (I) IS 17 YEARS OF AGE OR YOUNGER FOR THE DURATION OF A
24 CONTRACT SUBJECT TO THIS TITLE; OR

25 (II) WORKS LESS THAN 13 CONSECUTIVE WEEKS FOR THE
26 DURATION OF A CONTRACT SUBJECT TO THIS TITLE AND DURING THAT PERIOD
27 WORKS FULL-TIME.

28 (B) THIS TITLE DOES NOT APPLY TO A CONTRACT:

29 (1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR RESPOND TO
30 AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

31 (2) WITH A PUBLIC SERVICE COMPANY;

32 (3) WITH A NONPROFIT ORGANIZATION; ~~OR~~

33 (4) ~~WITH THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT~~
34 BETWEEN UNITS; OR

1 (5) BETWEEN A UNIT AND A COUNTY OR BALTIMORE CITY.

2 (C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES THAT
3 APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE FEDERAL
4 PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE CONTRACT OR
5 PROGRAM.

6 18-103.

7 (A) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN
8 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
9 THIS TITLE AT LEAST \$10.50 PER HOUR.

10 (B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL YEAR,
11 THE COMMISSIONER SHALL ADJUST THE WAGE RATE REQUIRED UNDER
12 SUBSECTION (A) OF THIS SECTION ANNUALLY BY THE ANNUAL AVERAGE INCREASE,
13 IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE
14 WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR
15 THE PREVIOUS CALENDAR YEAR.

16 (2) IF THE COMMISSIONER ADJUSTS THE WAGE RATE IN ACCORDANCE
17 WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL PUBLISH
18 THE NEW WAGE RATE ON THE DIVISION OF LABOR AND INDUSTRY'S WEBSITE.

19 (3) ON REQUEST BY ANY PERSON, THE COMMISSIONER SHALL GIVE THE
20 PERSON A PRINTED COPY OF THE NEW WAGE RATE.

21 (C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
22 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
23 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER TITLE
24 17, SUBTITLE 2 OF THIS ARTICLE OR THIS TITLE.

25 (D) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE HEALTH
26 INSURANCE TO AN EMPLOYEE, THE EMPLOYER MAY:

27 (1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE
28 EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH EMPLOYEE;
29 AND

30 (2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS SECTION
31 TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF THE HOURLY
32 COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH EMPLOYEE.

33 18-104.

34 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
35 EMPLOYERS SUBJECT TO THIS TITLE.

36 (B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP RECORDS
37 AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER

1 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
2 ENFORCEMENT OF THIS TITLE.

3 18-105.

4 (A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE
5 SPEECH AND ASSOCIATION.

6 (B) ~~(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT~~
7 BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS
8 UNDER THIS TITLE IS VOID.

9 ~~(2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED~~
10 ~~THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.~~

11 18-106.

12 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS
13 ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS
14 TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK
15 SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE A NOTICE OF:

16 (1) THE LIVING WAGE RATE;

17 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

18 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
19 COMMISSIONER.

20 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
21 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
22 WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE.

23 (C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE
24 COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL
25 PENALTY NOT EXCEEDING \$50 ~~\$500~~ \$50 PER VIOLATION.

26 18-107.

27 (A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE COMMISSIONER
28 SHALL INVESTIGATE A COMPLAINT UNDER THE COMPLAINT IN ACCORDANCE WITH
29 THIS TITLE.

30 (B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE
31 UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE
32 EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

33 (C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE
34 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND
35 PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR
36 PURPOSES OF ENFORCING THIS TITLE.

1 (D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE
2 COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

3 (2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER SHALL
4 SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
5 INTERESTED PARTIES.

6 (3) THE NOTICE SHALL INCLUDE:

7 (I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION;
8 AND

9 (II) THE TIME AND PLACE OF THE HEARING.

10 (4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

11 (I) SUBPOENA WITNESSES;

12 (II) ADMINISTER OATHS; AND

13 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND
14 OTHER EVIDENCE.

15 (E) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, THE
16 COMMISSIONER SHALL:

17 (I) ISSUE A DETERMINATION; AND

18 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY
19 WITH A COPY OF THE DETERMINATION.

20 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
21 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
22 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.

23 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY
24 THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
25 COMMISSIONER'S DETERMINATION.

26 18-108.

27 IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A
28 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
29 EMPLOYER SHALL:

30 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

31 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH
32 EMPLOYEE WHO ~~IS~~ WAS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS
33 TITLE.

1 18-109.

2 (A) (1) IF AN EMPLOYEE ~~IS WAS~~ PAID LESS THAN THE WAGE RATE
3 REQUIRED UNDER THIS TITLE, ~~OR IF AN EMPLOYER RETALIATES AGAINST THE~~
4 ~~EMPLOYEE SOLELY BECAUSE THE EMPLOYEE EXERCISED RIGHTS GRANTED UNDER~~
5 ~~THIS TITLE~~, THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER ~~TREBLE~~ THE AMOUNT
6 OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND
7 THE AMOUNT RECEIVED BY THE EMPLOYEE.

8 (2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS
9 REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM
10 FILING AN ACTION UNDER THIS SECTION.

11 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR
12 WAGES.

13 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE
14 SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

15 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE
16 PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS
17 TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

18 ~~(D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,~~
19 ~~THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES~~
20 ~~UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,~~
21 ~~INCLUDING REASONABLE ATTORNEY FEES.~~

22 18-110.

23 (A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE ~~SOLELY~~
24 BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.

25 (B) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS
26 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT
27 EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

28 SECTION 2. AND BE IT FURTHER ENACTED, That:

29 (a) The Department of Legislative Services shall conduct a study of the fiscal
30 and economic impacts of this Act on the public and private sectors.

31 (b) (1) In conducting this study, the Department shall consult with and
32 obtain all necessary and appropriate information from the Department of Labor,
33 Licensing, and Regulation, the Office of the Attorney General, local governments, and
34 other appropriate units and persons.

35 (2) Each unit of the Executive Branch of State government and each unit
36 of local government shall fully cooperate with the Department of Legislative Services

1 and its employees and agents in the activities necessary or helpful in fulfilling the
2 requirements of this section.

3 (3) Notwithstanding Title 10, Subtitle 6 of the State Government Article
4 or any other law, each governmental unit that is requested to provide information to
5 the Department of Legislative Services in furtherance of this section shall provide the
6 information promptly and without the necessity of further authorization.

7 (c) On or before January 1, 2006, the Department of Legislative Services shall
8 report the findings of the study to the General Assembly, subject to § 2-1246 of the
9 State Government Article.

10 ~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively and may not be applied or interpreted to have
12 any effect on or application to any contract awarded before the effective date of this Act.

13 ~~SECTION 4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
14 effect October 1, 2004.